IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10059 of 2000
with
CIVIL APPLICATION NO. 4177 OF 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JABBARSINH BHAVARSINH DEVDA

Versus

STATE OF GUJARAT

Appearance:
MR MEHUL H RATHOD for Petitioner No. 1
MR KL PANDYA, AGP for Respondent 1-3
MS SUBHADRA G PATEL for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/04/2004

COMMON ORAL JUDGEMENT

1.1 The petitioner was granted licence for fair price

shop for village Sakraveri - Dhanpura, Tal. Amirgadh, by order dated 23rd June 2000 which was set aside by the revisional authority by order dated 5th September 2000. The decision of the revisional authority is challenged by the petitioner before this Court.

2. The respondents Nos.2 and 3 issued advertisement in the month of October 1999 for granting licence for fair price shop in District Banaskantha, pursuant to which, the petitioner and respondent No.4 applied for the same for village Dhanpura.

2.1 As per the requirement of the Government rules, the proposal of the applicants were put up before the Taluka Development Supply Advisory Committee by the District Supply Officer on 16th December 1999. On 19th February 2000, the proposal sent by the Taluka Supply Advisory Committee was considered by the District Supply Committee for deciding the applications received by the Mamlatdar for issuance of licence and accordingly the Committee recommended the name of the petitioner, pursuant to which, the District Supply Officer passed the order on 23rd June 2000 granting licence to the petitioner for fair price shop for Dhanpura. The said order is at Annexure.C to the petition.

2.2 The respondent No.4 challenged the decision of the respondent No.2 by way of Revision Application No. 34 of 2000 and the State Government, after hearing the petitioner, remanded the matter by decision dated 6th September 2000.

3. This Court, while admitting the matter has stayed the order of the State Government and the petitioner is running the fair price shop from 28th July 2000.

4. I have heard learned Advocate Mr.Rathod appearing on behalf of the petitioner.

4.1 First submission of Mr.Rathod is that though under Clause 11, a person aggrieved by the refusal of the licence is required to prefer an appeal, the revisional authority has wrongly exercised the revisional jurisdiction under Clause 12 of the Gujarat Essential Articles Order, 1981.

4.2 Second submission of Mr.Rathod is that the revisional authority has wrongly interpreted Clause 6(4) of the Government Resolution dated 30th December 1999, at Annexure.B to the petition.

4.3 Thirdly, Mr.Rathod submitted that Clauses 6(6) (7) (8) and (9) are not required to be operated in view of the fact that those clauses are applicable only in case of Co-op. Societies and no Co-op. Society has claimed licence for fair price shop in the present case.

4.4 Fourth submission of Mr.Rathod is that the revisional authority has mis-read sub-clause (4) inasmuch as there is no requirement to give advertisement for particular fair price shop which is reserved for SC and ST and in fact, under Clause 6(4), if candidates from both the categories are found eligible, then priority is to be given to SC, ST or SEBC category or other categories referred to in Clause 6(4).

4.5 Fifth submission, Mr.Rathod contended that the finding of the first authority, namely, respondent No.3 - petitioner before the Committee was not found to be qualified and his case was not accepted by the Committee and out of 13 shops, 11 shops were granted to SC, ST and SEBC and therefore, the rest of the four shops could have been granted to the general category and hence, the Committee has considered the case of the petitioner and granted licence in favour of the petitioner in view of the fact that no other person was found to be eligible in the said category.

5. I have heard learned AGP Mr.Pandya for respondents Nos.1, 2 and 3. Mr.Pandya has supported the case of the revisional authority and has contended that the order passed by the revisional authority is just and proper and is required to be upheld. Mr.Pandya could not satisfy that the revisional authority has not dealt with the finding and the conclusion of the first authority while setting aside the order of the revisional authority.

6. I have also heard learned Advocate Ms.Subhadra Patel appearing for respondent No.4. She has contended that under Clause 6(4), the persons of SC and ST are to be given 50% of the shops and such a thing was not referred to in the advertisement and the order of the revisional authority is just and proper.

7.1 The first contention of Mr.Rathod regarding non-filing of the appeal before the appellate authority and filing of Revision Application before the State Government, has no force inasmuch as under Clause 12, the State Government is entitled to entertain Revision Application and call for and examine the record and

proceedings of the licensing authority or the Collector. It is true that the respondent No.4 has two remedies before the State Government, by way of appeal and by way of revision. As both the authorities have concurrent jurisdiction, it is open for the applicant before the State Government to choose the forum. On the contrary, by preferring Revision Application, the original applicant, i.e. respondent No.4 herein, has gone before the authority which has limited jurisdiction. If he would have gone before the appellate Authority, that authority would have wider jurisdiction and therefore, there is concurrent jurisdiction and it will be open for the person who is aggrieved by the decision to choose appropriate forum. The contention regarding non-maintainability of the revision application was never raised before the revisional authority. It will not be out of place to mention that when there is two concurrent jurisdiction and if this point was raised before the revisional authority, it is for the revisional authority whether to entertain the revision or to relegate it to the applicant before the appellate forum But, merely because the appeal is not filed and revision is preferred, revision is not maintainable, cannot be accepted. Therefore, the contention raised by Mr.Rathod that the State Government has no jurisdiction without appeal being filed before the appellate Authority, has no force. It may be stated that the respondent No.4 has right of appeal, but if he is not availing of that right of appeal and preferring Revision Application is not barred by the provisions and therefore, the first contention of learned Advocate for the petitioner requires rejection and it is rejected.

7.2 The second contention raised by Mr.Rathod regarding interpretation of Clause 6(4) which prescribes that in an urban and/or rural area if there is requirement for opening more than three shops, then the first priority should be given to the Co-op. Society and after considering the application of the Co-op. Society, the rest of the shops should be considered for other eligible candidates out of which, 50% of shops should be given on preferential basis to the persons belonging to SC, ST and Baxi Panch community and SEBC category and other categories referred in Clause 6, if they are qualified and remaining 50% of the shops should be given to handicapped persons and retired Service men and also to Freedom Fighters and educationally unemployed persons. On plain reading of sub-clause (4) of Clause 6, the finding of the revisional authority that the authority is required to reserve the shops is a misreading of Clause and therefore, the contention of Mr.Rathod is prima facie

correct and the observation of the revisional authority that it should have been mentioned in the advertisement is not required.

7.3 Clause 6(6), 7, 8 and 9 are applicable in case of Co-op. Societies and in the present case, no Co-op. Society has come or applied for licence and therefore, the said Clauses cannot be invoked in the present case. Therefore, contention of petitioner is required to be accepted.

7.4 Regarding the findings of the first authority that respondent No.4 is not qualified and his production of experience certificate at a belated stage, was not accepted is not disturbed by the revisional authority and therefore also, the order of the revisional authority requires interference.

7.5 The revisional authority has also not considered the finding of the authority that out of 13 shops, 11 shops were given to SC, ST and SEBC category and therefore, after allotment of these shops, the rest of the shops could be granted to other category and hence the case of the petitioner was considered and therefore, the finding of the revisional authority is not proper, more particularly when the revisional authority has not disturbed the findings and the conclusions of the first authority regarding allotment of 11 shops out of 13 shops to the reserved category.

8.1 Thus, the order of the revisional authority is contrary to record and calls for interference by this Court and the same is required to be quashed and set aside.

8.2 In that view of the matter, the petition is allowed. The order dated 6th September 2000 at Annexure.A to the petition is quashed and set aside and the order passed by the District Supply Officer, dated 23rd June 2000 is confirmed. Rule is made absolute accordingly. There shall be no order as to costs.

8.3 In view of the order passed in the main petition, the Civil Application for vacating the interim relief does not survive and the same is rejected.

(K.S. Jhaveri, J.)

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